

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PERNELL ANTHONY DECK, SR.,

Plaintiff,

v. // CIVIL ACTION NO. 1:15CV159  
(Judge Keeley)

JAMES RUBENSTEIN, Commissioner of  
Corrections, PAT MIRANDY, Warden  
at St. Mary's, DR. DIONISIO  
POLICARPO, Doctor under contract  
with D.O.C./Wexford, and MILESSA  
WADSWORTH, Health Service  
Administrator/Wexford,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 38]

On September 10, 2015, the pro se plaintiff, Pernell Anthony Deck, Sr. ("Deck"), filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Dkt. No. 1), which the Court referred to the Honorable James E. Seibert, United States Magistrate Judge, for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2. Deck alleges in his complaint that the defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious medical needs. Id. Defendants James Rubenstein ("Rubenstein") and Pat Mirandy ("Mirandy") filed a motion to dismiss on November 9, 2015 (Dkt. No. 14), while defendants Dr. Dionisio Policarpo ("Policarpo") and Milessa Wadsworth ("Wadsworth") filed a motion to dismiss on November 10, 2015 (Dkt. No. 18).

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On April 13, 2016, Magistrate Judge Seibert issued a R&R, in which he recommended that the Court grant Rubenstein and Mirandy's motion to dismiss and deny Policarpo and Wadsworth's motion to dismiss (Dkt. No. 38). He found that Rubenstein and Mirandy were entitled to qualified immunity, and that Deck had failed to state a deliberate indifference claim as to them. Id. at 9, 13. Magistrate Judge Seibert also found that dismissal as to Policarpo and Wadsworth was inappropriate on the current record. Id. at 18, 20.

The R&R specifically warned Deck that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 22. The parties did not file any objections.<sup>1</sup> Consequently, finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (Dkt. No. 38), **GRANTS** Rubenstein and Mirandy's motion to dismiss (Dkt. No. 14), **DENIES** Policarpo and Wadsworth's motion to dismiss (Dkt. No. 18), and **RECOMMITTS** the case to Magistrate Judge Seibert for further proceedings.

It is so **ORDERED**.

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: May 6, 2016.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE